IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

WP(C).No. 4609 of 2007(W)

PETITIONER: PETITIONER

T.RAJENDRAN, S/O. AMBUHNI MANIYANI,
RESIDING AT THATHRAVAN VEETTIL,
MATHU RAMBADI, PULLUR VILLAGE,
HOSDURG TALUK.

BY ADV. SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SMT.RABIA BEEGAM T.K.

RESPONDENTS:
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1. SUB INSPECTOR OF POLICE,
AMBALATHARA POLICE STATION,
PULLUR, KANHANGAD.

2. HARIDAS, S/O. KUNJAMBU PEROOR,
AMBALATHARA, PULLUR.

3. GANGADHARAN, S/O. KUNHIRAMAN,
PEROOR, AMBALATHARA, PULLUR.

4. POKKAN, S/O. KARTHAMBU, PEROOR
AMBALATHARA, PULLUR.

5. KUMARAN, S/O. KANNAN,
PEROOR, AMBALATHARA, PULLUR.

ADDL.R6 TO R9:

6. SUB COLLECTOR, KANHANGAD.

7. DISTRICT GEOLOGIST, KASARGOD.

8. ENVIRONMENTAL ENGINEER, POLLUTION CONTROL BOARD, KASARGOD.

9. PULLOOR PERIYA GRAMA PANCHAYAT, REP. BY ITS SECRETARY, HOSDURG TALUK, KANHANGAD.

ADDL.RESPONDENTS 6 TO 9 ARE IMPLEADED AS PER ORDER DATED 12.2.2007 IN I.A.NO.2458/2007.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.SURESH KUMAR KODOTH
SRI.T.MADHU
SRI.K.RAJEEVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).4609/2007

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE WORK ORDER EXECUTED BETWEEN PETITIONER AND M/S.ASHWINII AND ASHWIN ASSOCIATES.

EXT.P1(A): COPY OF THE LETTER DATED 27.1.2007 ISSUED BY THE SOUTHERN RAILWAY, SECTION ENGINEER (P.WAY), KASARGOD.

EXT.P2: COPY OF THE TAX RECEIPT REGARDING THE REMITTANCE OF TAX FOR THE YEAR 2006-07.

EXT.P3: COPY OF THE AGREEMENT BETWEEN THE PETITIONER AND LEGAL REPRESENTATIVES OF ONE RAMAN PEROOR.

EXT.P4: COPY OF THE DOCUMENT NO.1422/06 PURCHASED BY THE PETITIONER.

EXT.P5: COPY OF THE RESOLUTION DATED 25.10.2006 OF THE PULLUR PANCHAYAT.

EXT.P6: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT.

EXT.P7: COPY OF THE REPRESENTATION SUBMITTED BY M/S.ASHWINI AND ASHWIN ASSOCIATES TO THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R9(A): COPY OF THE JUDGMENT DATED 19.10.2001 IN O.P.NO.34220/2000 OF THIS HON'BLE COURT.

/TRUE COPY/

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C).NO.4609 OF 2007 (W)

Dated this the 22nd day of February, 2007

J U D G M E N T

KOSHY,J.

This is a petition for police protection for removing the red earth. Petitioner is a business man. He has made a contract with the Indian Railway for supply of red earth for the purpose of extension of Railway platform. Petitioner has entered into an agreement with the legal representatives of one Raman Peroor in Pulloor village for purchase of one acre of land as can be seen from Ext.P3. There are other properties also with the petitioner. It is the petitioner's case that he is only removing the red earth in which no license is necessary as he is only removing the red earth. It is not for the purpose of manufacturing bricks or something and he is not digging the land but only taking the red earth upto road level and this will not create any environment problem. Counsel for the Panchayat submitted that in view of Ext.R9 (a) judgment, petitioner cannot be allowed to dig the land so as to cause environmental problems. Other contesting respondents submitted that they are interested in environmental safety.

Govt.Pleader submitted that the proposal of the Geologist is that only 1000 cubic metres red earth can be removed from Survey No.427/1 (as covered under Exts.P3 and P4). Even though environment should be protected, development activities also cannot be stopped. In these circumstances, police should give protection to remove 1000 cubic metres red earth from Survey No.427/1 covered by Exts.P3 and P4 without digging below the road level unless there is any statutory order prohibiting the same. If any aggrieved parties are there, instead of taking law into their hands can approach civil court or statutory authorities and in the absence of any prohibitory order only upto 1000 cubic metres in Survey No.427/1 red earth can be removed as permitted by the Geologist. Geologist also should supervise the removal of the earth so that no environment problems are created and earth shall not be removed below the road level. This is without prejudice to the aggrieved parties' right to approach statutory authorities if there is any environmental problem. With the above observations this writ petition is disposed of.

J.B.KOSHY, JUDGE

T.R.RAMACHANDRAN NAIR, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

O.P.NO. OF 2006 ()

J U D G M E N T

1th January, 2007